IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.54 OF 2001

Mahadeo Gopala Shinde,age 73 yrs.
Occ.Agriculturist, resident of
Kadamwadi, near Ozarde, Tal:Wadi,
Dist.Satara. ..Applicant.

V/s.

1. Nivrutti Shripati Jadhav, age 73
2. Laxman Shripati Jadhav,Age 50
3. Parashuram Shripati Jadhav, age 68
4. Shankar Shripati Jadhav, age 66
5. Raghunath Shripati Jadhav, age 63
All agriculturists, residents of Pande,
Taluka Wai, Dist. Satara.

6. Namdeo Shripati Jadhav, age 62
7. The State of Maharashtra
8. Special Land Acquisition Officer,
   No.4, Krishna Dharan Project, Satara.
9. Mahadu Shripati Jadhav since deceased
   through his heirs.
9A. Smt.Kusum Sopan Jadhav, age 50
   Occ.Household.
9B. Manoj @ Pintu Sopan Jadhav,age 12,
   minor, through guardian Smt.Kusum
   Sopan Jadhav-mother.
9C. Sou.Godabai Balwant Bhosale(deleted)
   All r/o Pande, Tal.Wadi,Dist.Satara. ..Respondents.

Mr.Vinod Jadhav h/f M.V.Sali for applicant.

Mr.Pradeep K. Jadhav for Respondent Nos. 1 to 6.

Mr.A.R.Patil, AGP for State.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 9, 2007.

ORAL ORDER :

1. This revision application takes exception to the Judgment and order passed by the IV Additional

District Judge, Satara dated 15th July, 2000 in Mis. Civil Appeal No.89 of 1996.

2. The respondent Nos. 1 to 6 filed suit before the Court of IInd Joint Civil Judge Senior Division, Satara being Regular Civil Suit No.302 of 1986 for declaration that the award passed by the respondent No.8 in respect of the suit land was illegal and null and void and for further relief of possession of the suit land. The suit land has been acquired under Krishna Dam(Dhome) Project under the provisions of Maharashtra Resettlement of Project Affected Persons Act and Land Acquisition Act, 1894. After following necessary procedure, award came to be passed in respect of the said land. Consequent to the award, compensation amount was deposited and possession of the land has been taken over by the authorities. It is this award and subsequent action taken by the authorities made subject matter of the Regular Civil Suit No.302 of 1986 filed by the respondent Nos. 1 to 6. In the said suit, Written Statement was filed by the defendants. Amongst others, the suit was opposed on two preliminary grounds. Firstly, that, the same was barred by limitation as the acquisition proceedings were concluded as back as in 1970. The second objection was with regard to the jurisdiction

of the Civil Court to try and decide the subject matter of the suit.

3. Be that as it may, from the record, it appears that the suit was adjourned from time to time at the request of the plaintiffs. Eventually, the Court adjourned hearing of the suit to 17th January, 1991, as last opportunity. On 17th January, 1991, however, request was made on behalf of the plaintiffs for adjournment on the ground that their advocate was busy in some other court. That request came to be rejected by the trial Court by the order on two counts. Firstly because, the suit was kept for hearing and adjournment was granted on the earlier occasion as last indulgence to the plaintiffs. The second reason assigned by the trial Court is that the advocate was busy in some other court cannot be a ground for adjournment of the matter in terms of the provisions of C.P.Code. The Court then proceeded with the hearing of the suit and dismissed the suit by exercising powers under Order 9 Rule 8 of C.P.Code on the same day. Indeed, the plaintiffs filed application for restoration of the suit, which application was moved at 5.45 p.m. on 17th January, 1991. The Court however, rejected that application for reasons recorded in separate order passed on 17th

January, 1991.

4. The plaintiffs then filed another application for restoration of the suit sometime on 16th February, 1991. Once the application for restoration of the suit was already rejected, the subsequent application for the same relief could not have been entertained by the same Court(trial Court).

5. Be that as it may, interestingly, the plaintiffs also filed substantive appeal before the District Court challenging the Judgment and decree passed by the trial Court on 17th January, 1991 under Order 9 Rule 8, being Civil Appeal No.222 of 1991. When the said appeal was pending, abovesaid second application for restoration filed by the plaintiffs before the trial Court being Application No.33/91, was taken up for hearing by the trial Court and rejected on 16th February, 96.

6. Later on, appeal filed by the plaintiffs before the District Court being Appeal No.222 of 1991, against the Judgment and Decree in the suit filed by the plaintiffs dated 17th January, 1991, came up for hearing before the appellate Court. The same was dismissed on merits on 16th September, 1997.

It is not in dispute that this decision has been allowed to become final by the plaintiffs. In other words, challenge to the Judgment and Decree at the instance of the plaintiffs has been rejected by the appellate Court and which decision has become final.

7. The plaintiffs however, proceeded to file appeal before the District Court against the Judgment and Order passed by the trial Court dated 16th February, 1996 on the Misc. Application No.33 of 1991(second restoration application). The said appeal was numbered as Appeal No.89 of 1996. In other words, the appeal preferred by the plaintiffs being Appeal No.89 of 1996 emanated from the second restoration application filed by the plaintiffs before the trial Court being Application No.33 of 1991. This appeal was allowed by the appellate Court on 15th July, 2000, which Judgment and Order is impugned in the present revision application.

8. At the hearing, it was contended on behalf of the defendant/applicant herein that the second restoration application could not have been entertained by the trial Court, particularly when the appeal preferred by the plaintiffs against the Judgment and Decree passed by the trial Court has

been dismissed, and which decision had attained finality. The appellate Court has negatived the said objection on the reasoning that the appeal preferred by the plaintiffs being Appeal No.222 of 1991 was not maintainable, therefore, the reasons noted in the decision on the said appeal will be of no avail. The appellate Court then proceeded to consider the later appeal on merits of the controversy and found that the plaintiffs had made out sufficient cause for restoration of the suit. Accordingly, the appeal No.89 of 1996 filed by the plaintiffs came to be allowed by the impugned Judgment and Order, which reads thus:

> "**O R D E R**
>
> 1. This miscellaneous appeal is allowed. The order passed in Misc.Appln.No. 33/91 is hereby set aside and R.C.S.No. 302/86 is restored to the file on costs of Rs.100/- each to respondents No.1 to 3, on or before 1/9/2000.
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> 2. The learned Trial Judge is directed to give full opportunity to both sides and to decide the said suit on merits by giving top priority and expeditiously.
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> 3. Parties to bear their own costs."

9. After considering the rival submissions and keeping in mind the chronology of events referred to

above, which are not in dispute, I have no hesitation in taking the view that the appellate Court exceeded jurisdiction in allowing the later appeal preferred by the plaintiffs. The appellate Court has committed manifest error in taking the view that the former appeal preferred by the plaintiffs being Appeal No.222 of 1991, was not maintainable. This is so because, it is common ground that the order passed by the trial Court on 17th January, 1991, on the plaint Exh.1, was one under Order 9 Rule 8 of C.P.Code, after the trial Court had rejected the request for adjournment at the instance of the plaintiffs. Once the said order dated 17th January, 1991, below Exh.1(plaint), is held to be one under Order 9 Rule 8, being Judgment and decree, it necessarily follows that the same was appellable; and for which reason, the decision of the appellate Court on the former appeal preferred by the plaintiffs being Appeal No.222 of 1991, would bind the plaintiffs as the same was allowed to attain finality. Thus understood, it was not open to the appellate Court in the later appeal being Appeal No.89 of 1996, to examine the controversy on merits, so as to take a different view of the matter. On this reasoning, it is not necessary for this Court to go into the correctness of the view expressed by the appellate Court in the

impugned Judgment and Order on the merits of the controversy as to whether the plaintiffs had made out sufficient cause for non-appearance on 17th January, 1991 or for that matter, for adjournment of the hearing of the suit on the ground of non-availability of the advocate. In this view of the matter, the impugned Judgment and Order deserves to be set aside; and instead, the order passed by the trial Court rejecting the Misc. Application No.33 of 1991(second restoration application), will have to be restored for the reasons noted herein before.

10. There is additional reason for allowing the revision application, so as to terminate the suit filed by the plaintiffs. It is common ground that the relief claimed in the suit was, in substance, of declaration that the acquisition proceedings were vitiated and null and illegal and not binding on the plaintiffs. In the case of **State of Bihar V/s. Dhirendra Kumar & Ors.[(1995) 4 SCC 229],** which decision is relied by the counsel for the applicants/defendants, it is held that the Civil Court has no jurisdiction to go into the question of validity or regularity of notification under section 4(1) or of declaration under section 6 of the Land Acquisition Act. That enquiry can be done only by

way of Writ Petition under Article 226 of the Constitution of India.

11. Hence, this revision succeeds. The impugned Judgment and order is set aside and instead, the order passed by the trial Court below application No.33 of 1991 is restored. Ordered accordingly. No order as to costs.